

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.**

FIRST APPEAL NO.141 OF 1993.

Changdeo Maruti Chavan : Appellant.

versus

The State of Maharashtra : Respondent.

Mr.Nitin Mhatre for the appellant.

Mr.G.N.Gawade, AGP for the State.

CORAM : D.G.DESHPANDE, J.

DATED : 1st February 2005.

ORAL ORDER

1. Heard the advocate for the appellant and the learned AGP for the State. This appeal is filed by the original claimant for enhancing compensation awarded to him by the Civil Judge, Senior Division, Pandharpur dated 24.2.1992. 38 R land of the appellant was acquired. He was given compensation at the rate Rs.290/- R by the SLAO. The same was confirmed by the trial Court.

In addition, the compensation of Rs.16,000/- for pipe lines; the compensation of Rs.15,000/- for Tals; the compensation of Rs.11,500/- for bore well; Rs.11,000/- compensation for severance of the other lands; Rs.5000/- compensation for trees and; the compensation of Rs.10,000/- for crops damaged were awarded. This appeal is therefore filed by the appellant for getting compensation at a market value for the land acquired at Rs.2000/- per R, and also for enhancement of compensation on other grounds.

2. So far as compensation for land is concerned, it was contended by the counsel for the appellant that the acquired land was on the border of Akluj and, he has proved a sale instance of the land at Akluj. He relied upon a sale instance of 1.1.1987 on the basis of index extract at Exhibit 35. As per this extract, it was the land of one Vhanmane sold to the chairman, Sugar factory, Malinagar for Rs.80,000/- and, the land was admeasuring 38 R and from village Akluj. The claimant also relied upon other sale instances viz. 11-12-1991 and 14-7-1991 Exhibits 85 and 86. These two sale instances Exhibits 85 and 86 were not accepted by

the trial Court because those properties were situated within the limit of Akluj and were in industrial area. There is one more reason, not given by the trial court for discarding these two sale instances and that is they are of the year 1991, four years after the notification under Section 4 of the Land Acquisition Act which is dated 9.6.1987.

3. Counsel for the appellant strenuously urged and contended that it has come in the evidence that acquired land is on the border of village Akluj and the village of the appellant and, therefore, sale instance between Vhanmane and the Chairman of sugar factory vide Exh.36, being of 1987, is very much relevant and should have been taken into consideration.

4. As against this, the counsel for the respondent contended that the SLAO has taken three sale instances into consideration. They are dated 12-5-1987, 31-3-1987 and 12-5-1987 and, the Court has not taken into consideration sale instance vide Exhibit 36 between Vhanmane and the Chairman of sugar factory, firstly, because it was from different village and, secondly the sale

was in favour of the sugar factory. The learned AGP therefore contended that the sale, being in favour of the sugar factory, is admittedly for higher amount i.e. Rs.2,00,000/- per hectare and same rate could not be made applicable to the instant case. The trial Court observed regarding Exhibit 36 that the transaction is by the factory for its purpose and the land is situated in the vicinity of the factory area, therefore, it is likely to fetch more price. The Court also observed that no sale instance of any lands adjoining to the acquired land for price of Rs.2,00,000/- per hectare at the time of notification under Section 4 was produced by the appellant and, therefore, the Court refused to take into consideration the sale instance vide Exhibit 36.

5. I find that the reasonings of the trial Court are cogent and convincing. Merely because the land was on the border of Akluj does not bring the acquired land within the area of factory at Akluj and, if the land was sold to the Chairman of the sugar factory and was in the vicinity of the factory area, then it was bound to fetch more price than the price given to and

awarded to the claimant in this case.

6. The three sale deeds relied upon by the SLAO and referred to by me above are of the relevant period of the notification under Section 4 i.e. June 1987. They do not support the claim and case of the claimant that his land could have fetched Rs.2000/- per R. Therefore, for these reasons the findings of the trial Court in this regard viz. about enhancement of compensation for the land acquired are not required to be disturbed.

7. However, so far as other claim of the appellant is concerned, mainly one of the items claimed by the claimant was Rs.40,000/- as compensation for Jack well and Rs.40,000/- as compensation for pipe lines. The claimant has examined P.W.7 Vasant Kulkarni. He has filed his report at Exhibit 70. This report has given all the details of cement pipe line that was laid by the claimant and the expenses incurred by him. Witness (PW 7) has stated that he has taken the contract of construction of four pipe lines. However there is absolutely no cross examination of this witness to challenge his authenticity or

to show his bias against the Government or to prove falsity of his report. Learned AGP tried to contend that the estimate given by this witness (PW 7) as per report is of 1991 and if the cement pipe line was laid much before the notification, then the price at that time would be less. However, the fact remains that there was a pipe line in the acquired land. Details of which are given by the expert (PW 7) and even if some concession is given to the State about the price or value thereof or the expenses incurred by the claimant in that regard at the relevant time, grant of Rs.16,000/- by the Court is not adequate, proper or sufficient compensation. In the circumstances, the appellant is entitled to Rs.14,000/- more i.e. in all Rs.30,000/- out of the claim of Rs.40,000/- as compensation for the pipe lines.

8. Secondly, the appellant claimed Rs.40,000/- as compensation for jack well. In that regard also the evidence on record and report of witness (PW 7) support the case of the appellant that the jack well for which the claimant has spent considerable amount was in existence and he has suffered loss on account of

acquisition. The claimant has claimed Rs.40,000/- as compensation. But again accepting the objection of learned AGP that this valuation is of 1991, the compensation for jackwell can be fixed reasonably at Rs.25,000/-.

9. The claimant has claimed Rs.20,000/- for electric motor. But that has been rightly rejected by the trial Court and this cannot be granted by this Court because the electric motor could be severed from the land or from the well where it was attached and, the claimant could have put it to some other use.

10. Another item under which the claimant has claimed compensation is Rs.5,00,000/- for compulsory conversion of Bagayat land into Jirayat because of the destruction of two wells and pipe lines. In this regard, the trial Court has granted Rs.11,000/- as compensation. The total holdings of the claimant was 1 hectare and 72 R. Out of which 38 R. has been acquired. In this regard, while considering this aspect and claim, the trial Court observed :-

"The area acquired was for small

irrigation tank. Naturally the applicant would be entitled to take income and crops in the remaining land by the use of the tank water So if the market value of the suit land be taken as Rs.29,000/- per hectare, then 25 per cent of the compensation awarded to the land acquired would come to Rs.11,000/- which could be given to the applicant on account of severance."

The Court also observed and held that the applicant ought to have led the evidence to show that what would be the loss of income because of severance, and further observed that, it was not the case of the claimant that remaining land would become totally useless for any kind and use.

11. From the aforesaid observations, it is clear that Rs.11,000/- has been fixed by the trial Court as 25 per cent compensation for the severance and this is done on the basis of the judgment of this Court reported in 1990 (2) Mh.L.R. 260. Even though, the trial Court has relied upon this judgment, neither the counsel

for the appellant nor the respondent could lay their hands upon this ruling in spite of their best efforts for which sufficient time was given to them in the midst of the argument. Therefore, it cannot be ascertained as to whether the court was justified in placing reliance upon this judgment. Since the compensation awarded cannot be increased for the reasons stated above, the calculations made by the lower court regarding compensation of Rs.11,000/- on account of severance is not required to be interfered with.

12. The claimant also claimed damages for tals. He had spent huge amount towards construction of the said Tals and has claimed Rs.40,000/- and claimed Rs.25,000/- for trees in the land. On the basis of the evidence of witness who was worked for construction of Tal, it could be held that the claimant is entitled for Rs.5000/- as compensation for tal and, Rs.5000/- for trees.

13. Therefore, in the result, the appeal has to be partly allowed and, the appellant will be entitled to Rs.14,000/- more as compensation for pipe line, Rs.25,000/- for jackwell; Rs.5,000/-

for Tal and Rs.5,000/- for trees. Hence the order :-

:ORDER:

The appeal is partly allowed.

The claimant will be entitled to recover from the respondent additional compensation of Rs.49,000/- with interest at the rate of 9% per annum on the additional compensation granted by this Court from the date of impugned order till the payment.

01/02/2005

[D.G.DESHPANDE]

JUDGE.